

**BEFORE THE
ILLINOIS COMMERCE COMMISSION**

Donald L. Bertelle)	
)	
vs.)	
)	
Illinois Bell Telephone Company)	00-0473
)	
Complaint as to improper installation of)	
residential telephone line and repeated)	
refusal to repair same in Chicago, Illinois.)	

**MOTION OF AMERITECH ILLINOIS TO DISMISS OR,
IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

Illinois Bell Telephone Company (“Ameritech Illinois”) moves to dismiss the Complaint for lack of subject matter jurisdiction. The Complaint arises from a dispute about installation and repair of inside wiring, which is a deregulated service over which the Commission has no jurisdiction.

FACTS

Both the Complaint and the evidence adduced at trial show that Mr. Bertelle’s claims relate to what is generically called “inside wire” or “customer premises wire.” In particular, the Complaint alleges the following:

1. My residential phone line (312-226-8885) is improperly installed, utilizing approximately 70’ of line (grey) designed and manufactured for inside use on the outside of my building.
2. This has caused problems since I purchased the building and had service connected in 1994; see copy of letter to Richard C. Noteaert [sic] dated 13/4/98.

3. My telephone is currently not working, and the reason is the grey indoor line extending on the outside of my building from the alley to the front; that line has apparently become weathered or affected in some way by the elements.

Complaint ¶¶ 1-3. The relief Mr. Bertelle requests is for his service to be properly installed, “with outdoor lines used outdoors and indoor lines used indoors.” Id., p. 2.

The evidence at the hearing confirmed that the wiring described in Mr. Bertelle’s allegations was, from a regulatory perspective, “inside wiring.” The testimony described the wire as running from the Network Interface Device (“NID”)¹ at the rear of his property, across the roof of the building, and into the exterior second-floor wall of the residential portion of the building. Ameritech Ex. 1, p. 3; Tr. at 166-70; Bertelle Ex. 3B-K. In fact, Mr. Bertelle admitted that the NETPOP was located at the rear of his building and that the wiring at issue ran from the NETPOP toward the front of his building. Tr. at 157, 158, 166; Bertelle Ex. 3L.

The evidence also showed that, with one exception in 1995,² any service problem Mr. Bertelle reported was attributable to facilities on his side of the NID, such as the inside wiring. See Ameritech Ex. 2, Attachments A & B. In particular, the evidence showed that, when tested at the NID, the service worked properly on at least five occasions, that Ameritech Illinois repair technicians made repairs to customer wiring on two occasions, and that technicians isolated a problem to customer equipment on one

¹ A NID is the specific piece of equipment used to mark the Network Point of Presence (“NETPOP”). Ameritech Ex. 1, Attachment C (Ameritech Illinois Tariff 20, Pt. 2, § 1, sheet 18). The NETPOP is the point where Ameritech Illinois’ network facilities legally terminate. See Bertelle Ex. 1 (Ameritech Illinois Tariff 20, Pt. 2, § 2, sheet 27).

² In October 1995, Mr. Bertelle reported a service problem that apparently was caused by rain penetrating a terminal in Ameritech Illinois’ facilities; the problem was corrected the same day. See Tr. at 311; Ameritech Ex. 2, Attachments A & B.

occasion. See id.; Tr. at 151, 158, 184, 316-17. The testimony also showed that deterioration of, or damage to, the wiring running across the roof of Mr. Bertelle's building could have caused the service problems he reported. See Ameritech Ex. 1, p. 4; Tr. at 301-02.

Mr. Bertelle claimed during the hearing that the length of the wiring run across the roof of the building violated a provision of the Ameritech Illinois tariff governing the location of the NETPOP. In particular, he testified (Tr. at 154-55) that the installation violated paragraph 32.2(B), which states that the NETPOP "will normally be located within 25 feet of the point at which the network cable enters the building." Bertelle Ex. 1 (Ameritech Illinois Tariff 20, Pt. 2, § 2, sheet 27).

ARGUMENT

Mr. Bertelle's claims arise from the installation and maintenance of inside wiring, and the tariff provision on which he relies is inapplicable here. Since the Commission has no jurisdiction over a deregulated service such as inside wiring, the Complaint should be dismissed.³

The Commission deregulated inside wire in a series of orders in the mid-1980s. See, e.g., Second Interim Order, Ill. C.C. Dkt. 86-0278, p. 3 (Dec. 10, 1986) (Appendix

³ Ameritech Illinois has presented its motion in the alternative because Commission rules do not recognize separate substantive or procedural rules for motions to dismiss, motions for summary judgment, or other dispositive motions. See 83 Ill. Admin. Code § 200.190. The distinctions between such motions drawn by the Illinois Code of Civil Procedure are inapplicable in administrative proceedings. See Desai v. Metropolitan Sanitary Dist., 125 Ill. App. 3d 1031, 1033 (1st Dist. 1984).

1); Third Interim Order, Ill. C.C. Dkt. 86-0278, pp. 3, 5-6 (Sept. 30, 1987) (Appendix 2); see also Grigas v. Illinois Bell Telephone Co., Ill. C.C. Dkt. 90-0302 (1991) (Appendix 3). As a part of those orders, the Commission defined a demarcation point at which the telephone company's network would end and the customer's premises wire would begin. This demarcation was necessary both to define the end of the regulated network and to support the cost and rate adjustments that were necessary to remove inside wire investments from telephone companies' rate bases. With respect to "simple" inside wire, the Commission determined that, on a forward-going basis, the demarcation point should be located outside the building and delineated by the installation of a NID, as is the case with Mr. Bertelle's installation. See Appendix 2, pp. 3, 6.

The Commission's rules now specifically identify the installation and maintenance of inside wire as a deregulated service. 83 Ill. Admin. Code § 711.10(b). As a result, the Commission should dismiss any complaint addressed to the installation or maintenance of inside wire. See Appendix 3, at *2-3. In Grigas, the complainant alleged that Ameritech Illinois charges for a repair visit were fraudulent because the repair technician did not find the service problem but simply asserted that the problem resulted from the complainant's telephone set. Id. at *1. The Commission dismissed the complaint because it lacked authority to grant relief when the complaint "relates to a dispute about charges for services no longer regulated by this Commission." Id. at *2.

Like the complaint in Grigas, Mr. Bertelle's complaint arises from a dispute about an unregulated service: maintenance of customer premises inside wire. The Commission lacks authority to hear such a claim and should dismiss the complaint.⁴

The tariff provision upon which Mr. Bertelle relies is not to the contrary, and nothing in the Ameritech Illinois tariff purports to govern the installation or maintenance of customer premises wire or to bring those issues within the Commission's jurisdiction.⁵ Instead, the tariff merely defines the NETPOP, which is the point at which, from a legal perspective, the Company's responsibility (and the Commission's jurisdiction) ends and the customer's responsibility (and the jurisdiction of the courts) begins. The relevant provision in the tariff, quoted in full, is as follows:

The NETPOP will normally be located within 25 feet of the point at which the network cable enters the building. The NETPOP is the point where the Company's network facilities terminate and the Company's responsibility for installing and maintaining facilities ends. Facilities on the customer's side of the NETPOP are not subject to the provisions of this tariff unless specifically indicated.

Bertelle Ex. 1 (Ameritech Illinois Tariff 20, Pt. 2, § 2, sheet 27) (emphasis added). The tariff's language concerning placement of the NETPOP within 25 feet of the point at which the network cable enters the building does not address the situation here. To

⁴ Disputes about an unregulated service should be litigated in courts of general jurisdiction. Sutherland v. Illinois Bell Telephone Co., 254 Ill. App. 3d 983, 993 (1st Dist. 1993) (rejecting argument that inside wire complaint should have been brought before the Commission). Mr. Bertelle will not be prejudiced by a dismissal here because he remains free to pursue his claims elsewhere.

⁵ In fact, as part of the deregulation effort, the Commission ordered Ameritech Illinois to "file tariff sheets to delete all provisions applicable to the installation and maintenance of simple wire and the maintenance of complex wire." Appendix 1, p. 3.

understand why this is so, it is necessary to understand both the language itself and its history, in light of the Commission's orders deregulating inside wire.

As explained above, with respect to "simple" inside wire, the Commission determined that the NETPOP should be located outside the building and delineated by the installation of a NID. With respect to more complex inside wire (known as "building cable" or "house cable"), the Commission approved the installation of the NID inside the building. However, the Commission determined that the demarcation between the regulated network cable (or utility cable) and the deregulated building cable (or house cable) should be "within 25 feet of the cable entrance into a building." Order, Ill. C.C. Dkt. 86-0278, pp. 8-9 (June 8, 1988) (Appendix 4); Order, Ill. C.C. Dkt. 86-0292 at Appendix A, pp. 5, 16-17 (Dec. 22, 1987) (Appendix 5). These decisions make clear that Mr. Bertelle has misunderstood the language of Ameritech Illinois' NETPOP tariff in several fundamental ways.

First, the tariff provision relied upon by Mr. Bertelle merely identifies the legal demarcation point – the NETPOP – between the telephone company's network and the customer's premises wire. It does so particularly with regard to building cable, for which the NID may be located within the customer's building. It does not address the manner in which customer premises wire should be installed or maintained, nor does it bring those

issues within the Commission's jurisdiction.⁶ Appendix 2, pp. 3-4; Appendix 4, pp. 8-9; Appendix 5 at Appendix A, pp. 5, 16-17.

Second, the tariff provision relied upon by Mr. Bertelle does not apply to the situation presented by his complaint at all, even to define the NETPOP. As explained above, the Commission's orders make clear that, in the circumstances to which they apply, the NETPOP is deemed to be located "within 25 feet of the cable entrance into a building." Appendix 4, pp. 8-9 (June 8, 1988). The language does not apply at all where, as Mr. Bertelle admits here (Tr. at 166), the NETPOP is located at the exterior of the building. This is clear from the language of the tariff: "The NETPOP will normally be located within 25 feet of the point at which the network cable enters the building." Bertelle Ex. 1 (Ameritech Illinois Tariff 20, Pt. 2, § 2, sheet 27). If the provision applied to this case at all, it would instead refer to the point at which the "customer premises wire" enters the building.

Finally, the tariff expressly provides that the Company is not responsible for customer premises wire and that the terms of the tariff are not applicable to customer premises wire. "The NETPOP is the point where the Company's network facilities terminate and the Company's responsibility for installing and maintaining facilities ends.

⁶ Mr. Bertelle's position misses a subtle but important distinction between the NETPOP and the NID. The NETPOP is a legal concept: "The location of the interface between Company central office lines serving a building, or first building of a multi-building commercial property, and the telecommunications wire and cable within that building used by one or more customers." Ameritech Ex. 1, Attachment C (Ameritech Illinois Tariff 20, Pt. 2, § 1, sheet 18). On the other hand, a NID is a piece of physical equipment: "The specific interface equipment used at a NETPOP." Ameritech Ex. 1, Attachment C (Ameritech Illinois Tariff 20, Pt. 2, § 1, sheet 18). Mr. Bertelle's complaint is related to the location of the NID, but the tariff only deals with the legal demarcation point. Thus, the tariff determines that where the Company's network and the Commission's jurisdiction end, but it does not require the NID to be placed in any particular location.

Facilities on the customer's side of the NETPOP are not subject to the provisions of this tariff unless specifically indicated." Bertelle Ex. 1 (Ameritech Illinois Tariff 20, Pt. 2, § 2, sheet 27). It is thus clear that that the tariff does not apply to the situation presented by this Complaint, nor does it bring the Complaint within the Commission's jurisdiction.

CONCLUSION

THEREFORE, for all of the reasons stated above, the Complaint should be dismissed.

Respectfully submitted,

Mark A. Kerber
James A. Huttenhower
Illinois Bell Telephone Company
225 W. Randolph Street, Suite 25-D
Chicago, Illinois 60606
312-727-7140
312-727-1444